

**MINUTES  
of the  
FOURTH MEETING  
of the  
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**September 10-12, 2014  
Barbara Hubbard Room, New Mexico State University, Las Cruces  
Elephant Butte Lake Event Center, Elephant Butte**

The fourth meeting of the Legislative Health and Human Services Committee (LHHS) was called to order by Representative James Roger Madalena, chair, on Wednesday, September 10, 2014, at 9:15 a.m. in the Barbara Hubbard Room in the Pan American Center at New Mexico State University (NMSU) in Las Cruces.

**Present**

Rep. James Roger Madalena, Chair  
Sen. Gerald Ortiz y Pino, Vice Chair  
Rep. Nora Espinoza  
Rep. Doreen Y. Gallegos (9/10)  
Rep. Terry H. McMillan (9/10)  
Sen. Mark Moores (9/11)  
Sen. Benny Shendo, Jr. (9/10, 9/11)

**Absent**

Sen. Gay G. Kernan

**Advisory Members**

Sen. Sue Wilson Beffort (9/11)  
Sen. Craig W. Brandt (9/10)  
Sen. Jacob R. Candelaria (9/11, 9/12)  
Rep. Nathan "Nate" Cote  
Sen. Linda M. Lopez (9/10)  
Sen. Cisco McSorley  
Rep. Vickie Perea  
Sen. Sander Rue (9/11)  
Rep. Edward C. Sandoval  
Rep. Elizabeth "Liz" Thomson

Rep. Phillip M. Archuleta  
Rep. Miguel P. Garcia  
Rep. Daniel A. Ivey-Soto  
Rep. Sandra D. Jeff  
Sen. Bill B. O'Neill  
Rep. Paul A. Pacheco  
Sen. Mary Kay Papen  
Sen. Nancy Rodriguez  
Sen. William P. Soules

(Attendance dates are noted for members not present for the entire meeting.)

**Staff**

Michael Hely, Staff Attorney, Legislative Council Service (LCS)  
Shawn Mathis, Staff Attorney, LCS  
Rebecca Griego, Records Officer, LCS (9/10)  
Nancy Ellis, LCS  
Carolyn Peck, LCS (9/11, 9/12)

## **Guests**

The guest list is in the meeting file.

## **Handouts**

Handouts and other written material are in the meeting file.

## **Wednesday, September 10 — Barbara Hubbard Room, New Mexico State University, Las Cruces**

### **Welcome and Introductions**

Representative Madalena welcomed legislators and guests and asked staff members to introduce themselves. He then introduced Garrey E. Carruthers, Ph.D., president of NMSU and a former governor of New Mexico.

### **Burrell College of Osteopathic Medicine at NMSU**

President Carruthers described plans for NMSU to partner with Burrell College of Osteopathic Medicine and said that the following three agreements have already been negotiated: (1) the college will pay \$260,000 to \$270,000 annually in rent to Arrowhead Center, Inc., business park; (2) the college will purchase various services from NMSU, including student fees and services; and (3) an initial contribution of \$150,000 to \$500,000 has been made for scholarships. Once pre-accreditation is obtained, there will be 125 to 150 medical students enrolled in the school annually, with an initial investment of \$28 million. This project will use a local architect and contractor, and, by the fall of 2016, it will have 70 to 80 full-time employees, President Carruthers said.

There are two other land grant universities that have partnered with privately owned osteopathic colleges and several more that are considering it, he said. New Mexico has a critical shortage of primary care physicians, and osteopathic schools tend to graduate up to 60 percent of students who specialize in primary care. Dan Burrell, the Santa Fe entrepreneur whose name the college will bear, will have to put \$35 million in escrow until the first class graduates, with a total start-up investment of \$85 million. President Carruthers introduced George Mychaskiw, D.O., dean of the Burrell College of Osteopathic Medicine.

Dr. Mychaskiw said the idea for the school began with a vision to increase health care access in New Mexico and the borderplex (Las Cruces, El Paso), one of the most underserved areas in the nation. He gave a brief overview of the history of osteopathic medicine in America, with its emphasis on treating the whole body and the interrelated importance of nutrition and healthy living. He described 42 osteopathic colleges that are spread throughout the United States, with specialties in all fields of medicine. Dr. Mychaskiw said that the new college hopes to create as many as 300 new residency training programs and will collaborate with community health care organizations and smaller hospitals that do not currently have residency slots to achieve this goal. President Carruthers noted that the early college high school is located

adjacent to Burrell College, and the medical high school is located nearby; both will be able to feed into and interact with the new medical school at NMSU.

Upon questioning, President Carruthers, Dr. Mychaskiw and committee members discussed the following topics.

*Firewall between public and private funding.* Committee members expressed concern about the potential of public dollars being used on the project, but President Carruthers assured them that NMSU would not be an investor, nor would its foundation, in the new college. While there has been some staff time involved, there have not been any out-of-pocket costs, he said. Eventually, there will be the possibility of faculty exchange, with Burrell paying NMSU faculty to teach some courses.

*A cut in funding for NMSU.* A member heard that NMSU will get less from the general fund this year, and President Carruthers confirmed that this is true because of declining enrollment. Most schools in the state are experiencing this decline, he said. During the economic downturn, there was a spike in enrollment. Now, high school graduation rates are declining or flat, and private schools, advertising heavily, are encroaching on public colleges and universities. President Carruthers was critical of the funding formula being used by the state; he said it sends the wrong message about the importance of a college education, and it needs to be revisited. Higher education is a high fixed-cost industry, he said. NMSU needs to be more efficient with its resources during the summer, he said, and lottery scholarship students should be able to use their funds for summer courses.

*Cost of tuition at Burrell College.* Dr. Mychaskiw said tuition will be \$48,500 per year, and because the college will be a proprietary taxpaying structure, no Title IV funding will be available for the first two years, so students will have to get private loans and service-related scholarships and grants. There also will be a college foundation that can provide scholarships. Dr. Mychaskiw said that many different models for a private college were reviewed, but even with the Title IV limitation, the private investor model offers the best likelihood of success. This college will be held to the same accreditation standards as other nonprofit schools, and default rates on student loans in medical school are low, between one and two percent, and the graduation rate is nearly 100 percent.

*Ambitious numbers for new residency slots.* A member said that legislators were warned by the National Conference of State Legislatures (NCSL) that there is a growing crisis of too few residency slots for medical school graduates. Another member cited lower figures for matching osteopath graduates to residency slots than for regular medical school graduates. Dr. Mychaskiw asserted that 98 percent of osteopathic graduates are matched for residencies and that there is no difference in employability once the residency is completed. New residency slots will be created at hospitals in Texas and New Mexico and at federally qualified health centers, he said, adding that he is confident in these numbers. Students will come from all over the country, Dr. Mychaskiw said. The demand is huge (three to four applicants for every student slot), and

southern New Mexico offers an advantage with NMSU. A feasibility study was done, he said, and showed excellent potential at this location for this 30-year project.

### **Child Trauma and Well-Being Core Group**

Susan Robison, director of state relations and public policy for the Casey Family Programs, described the foundation's "2020: Building Communities of Hope" initiative, a shared vision at local, state, tribal and national levels to improve the safety and success of children and families and to reduce the need for foster care (see handout). Casey Family Programs provide nonpartisan, comprehensive information on child welfare and education, which is based on data and best practices.

It takes all three branches of government working together with a shared vision to improve outcomes for the most vulnerable children, Ms. Robison said. Recognizing this, the Casey Family Programs joined with the NCSL, the National Governors Association, the National Council of Juvenile and Family Court Judges and the National Center for State Courts to provide support for state teams composed of all three branches to examine issues and practices and develop state-specific plans for improving outcomes for children and families (see handout). Named the Three Branch Institute (3BI), its goal is to provide measurable improvements in the lives of children involved in the child welfare system. New Mexico was one of seven states chosen in 2013 to participate in a new, 18-month-long 3BI initiative with the specific goal of improving the social, emotional and physical well-being of children in foster care. The governor of each state appointed executive branch team members and the core team leader. The legislative leadership nominated two legislative participants, and each team also included judicial representation. State teams have participated in two national conventions, the first held in Philadelphia in July 2013 and another in Milwaukee in July 2014. Success requires active, sustained participation and commitment from all three branches, Ms. Robison said, and 3BI participants often become ambassadors for 3BI with their peers.

Sidonie Squier, secretary, Human Services Department (HSD), and Yolanda Berumen-Deines, secretary, Children, Youth and Families Department (CYFD), are co-chairs of New Mexico's 3BI team. The two legislators chosen for the project are Senator Beffort and Representative Don L. Tripp. Mr. Hely is also a participant. The 3BI team meets regularly, with the next meeting scheduled on September 24 at 3:30 p.m. on the fifth floor of the Public Employees Retirement Association building in Santa Fe, and all are invited.

Nina Williams-Mbengue, director of the Children and Families Program of the NCSL, said her organization has been working closely with Casey Family Programs and 3BI. State legislators can be instrumental in encouraging collaboration among stakeholders, she said, working with courts, child welfare administrators and others (see handout). In recent years, state lawmakers have crafted policies around child well-being in many areas, including screening and assessment, health and mental health, social and emotional needs and prevention and early intervention. Ms. Williams-Mbengue's handout provided specific examples from different states, and she urged legislators to visit the NCSL's child welfare web page.

Annamarie Luna, deputy program director, Protective Services Division, CYFD, said her division is in its fourth year of the Child Trauma Academy, which utilizes a neurosequential model of therapeutics. Ms. Luna said that the division wants to make sure that each child in foster care receives this assessment, and it is now completing the first training of 20 assessors working within the core service agencies (CSAs). It is important to make sure that each child in foster care is given the trauma-informed assessment, she said, in order to get the child the services the child needs and to reduce the inappropriate use of psychotropic medications in this population. New Mexico's participation in 3BI has provided an opportunity to work with legislators and with the Administrative Office of the Courts, Ms. Luna said.

Daphne Rood-Hopkins, director of the Office of Community Outreach, CYFD, said that CSAs focus on the most vulnerable children, who have complex behavioral issues, and adults with severe mental health issues to provide certain services. CSA providers must qualify and be able to provide timely services, and they must understand the brain map that is central to trauma-informed treatment, Ms. Rood-Hopkins said. They also attend advanced clinical seminars to make certain they are well-trained to implement these strategies.

Veronica Öhrn-Lännerholm, clinical services manager of the Behavioral Health Services Division, HSD, has direct connections with the CSAs and also has oversight of managed care organizations (MCOs). The division is committed to exploring ways to work collaboratively to create long-term sustainability, she said. Connecting stakeholders and divisions was identified by the New Mexico 3BI team as a goal, and achieving it might involve changing definitions and billing codes and assessing the impact of Centennial Care and requirements of the federal Patient Protection and Affordable Care Act (ACA).

Beth A. Collard, a child welfare and juvenile justice attorney, Administrative Office of the Courts, is administrator of the court fee fund of the New Mexico Court Improvement Project. Ms. Collard said she sees the 3BI initiative as a lens, and she emphasized the importance of getting information about available services to the judges and attorneys who work with foster children. Ms. Collard said she is especially concerned about the impacts of psychotropic medications being given to children.

Upon questioning, panel presenters and committee members discussed the following topics.

*Composition of New Mexico's 3BI team.* A member said it was the first time he had heard about 3BI, and he noted that it seemed odd that no one from this committee is involved. Another member questioned the co-chairs both being from the executive branch and noted that the legislators appointed are from the same political party. The behavioral health system is in serious disarray, the member said, and services are not available for children in custody. Asked about 3BI collaboration with NMSU's child safety department, Ms. Luna said there was a representative in the beginning, and the team is planning to include the university in a larger initiative in the near future.

*CSAs and the role of OptumHealth.* The restriction on CSAs does not make sense, commented one committee member who does not understand why a respected provider like La Familia cannot be reimbursed for case management services to children. Getting a child in foster care screened and assessed sounds good, the member continued, but why perform this great assessment and then provide identical services to everyone? Ms. Öhrn-Lännerholm said the possibility of expanding CSAs is on the HSD's radar. The challenge is in delivering services, she said. The second-year 3BI plan has been altered, since not every child in foster care can be screened because capacity is lacking. The member asserted that the HSD's decision to shut down 15 behavioral health care agencies in 2013 was an enormous disservice to the children of this state. A member's question about the role of OptumHealth in managing approximately \$50 million in general funds for non-Medicaid behavioral health was answered by Ms. Rood-Hopkins, who said she has direct oversight of those funds. OptumHealth does not approve her division's expenditures, it just pays the bills. Ms. Rood-Hopkins also stated that she directly manages the budgets for juvenile justice and infant mental health funds.

*Concerns about overmedication.* Several committee members asked about children in foster care who are receiving psychotropic medications. Reducing the use of medication in children who are in foster care is an important goal of the 3BI initiative, panel members told the committee, and there are new federal requirements for states to develop protocols for the use and oversight of these medications.

Ms. Robison and Ms. Williams-Mbengue told members they would be pleased to bring in national experts in a "Roots of Empathy" pilot to testify before this committee.

### **Lunch Presentation of Human Dance and Recreation: High Impact on Health and Human Development**

Committee members and staff were bused to Renfrow Hall for a lunch presentation by students and faculty about NMSU's ballroom dancing program, which is one of three degree programs in the country. A group of students offered testimony about the benefits of the NMSU movement program and described plans by well over half of its graduates to continue their education in graduate programs, such as medical school and physical and occupational therapy. A dancing program open to the community on Tuesday evenings attracts an average of 90 people. Ballroom dancing has been shown to help reduce problems of dementia in the elderly, and programs implementing kinesthetic learning in elementary schools have shown tremendous promise, members were told.

### **Southwest Region National Child Protection Training Center**

Shelly A. Bucher, director of the Southwest Region National Child Protection Training Center at NMSU, told committee members that child abuse and neglect has become a national crisis, citing statistics indicating that two out of every three children are exposed to violence in the United States (see handout). New Mexico ranks sixth in the nation in child deaths and forty-ninth in child well-being, Ms. Bucher said, citing multiple recent news reports of child abuse and death. The mission of the National Child Protection Training Center is to end child abuse,

neglect and other forms of child maltreatment through education, training, awareness, prevention, advocacy and the pursuit of justice.

A recent two-day training sponsored by the center and co-sponsored by the New Mexico Administrative Office of the District Attorneys attracted 107 participants who learned from experts the most effective techniques for investigation and prosecution of child abuse cases. Another training in May, ChildFirst, focused on interviewing and preparing for court testimony children who have experienced sexual abuse. A September training, Crime Scene to Trial, taught best practices for investigating child maltreatment, whether physical or sexual, from documenting the crime scene to interviewing witnesses and suspects. In October, another training will be offered in partnership with the Children's Law Center in the investigation and litigation of civil child abuse cases.

Esther Devall, Ph.D., department head and professor in the Family and Consumer Science Department at NMSU, said that severe childhood trauma changes the brain and can affect development and health throughout life. There has not been enough hands-on training for professionals, Dr. Devall said, and the center's programs aim to remedy this. New Mexico can and must do more to address the dismal statistics for its vulnerable children, she said. Ms. Bucher is requesting \$250,000 from the general fund to hire a full-time director for the center, pay for presenter travel and training scholarships and expand coverage into west Texas and Arizona.

### **Citizen Review Board**

As state contractor for the New Mexico Child Abuse and Neglect Citizen Review Board, Ms. Bucher presented a spreadsheet of highlighted proposed changes to the Citizen Substitute Care Review Act, which provides a permanent system for independent and objective monitoring of children placed in the custody of the CYFD (see handouts). In a report to the judge, a local review board will indicate whether it agrees with the CYFD's course of action in a particular case. Among others, the changes would set new time lines for submission of information from the CYFD to local review boards and require the CYFD to notify clients of their right to request that a case be selected for local board review. Upon questioning by committee members, Ms. Bucher said local citizen review boards have had difficulty getting information from the department and often get complaints directly from the public, guardians, parents and hospital workers. By law, every CYFD investigation is supposed to come to the board for review. A committee member expressed frustration that a shortage of staff at the CYFD may be affecting this, yet the department, along with many others, continues to come to the legislature with a flat budget. Ms. Bucher said she has been working together with the CYFD on these changes.

### **Minutes Approved**

A quorum for this meeting was achieved at 3:06 p.m. with the arrival of Senator Shendo. A motion was made and seconded to approve the minutes of the July and August meetings of the LHHS and was approved unanimously.

## **Healthy Kids, Healthy Communities Update**

Patty Morris, Ph.D., is director of Healthy Kids, Healthy Communities, a Department of Health (DOH) program that helps provide start-up funding for selected communities throughout the state to build a broad-based local coalition to increase opportunities for physical activities and healthy eating. Initiated in 2012, the program now includes nine counties, four tribes and 21 public school districts, and it involves 24 percent of the New Mexico public elementary school population, Dr. Morris said (see handout).

Increased physical activity is encouraged by opening school yards during non-school hours, creating new signage to encourage the use of active play spaces and maps of plans and connectivity, promoting mileage clubs and designing road "diets" to accommodate bikes and pedestrian traffic. Increased opportunities for healthy eating include providing salad bars and pre-made salads for students, utilizing locally grown produce in cafeterias, sponsoring fruit and vegetable tastings at schools and using community and school gardens as outdoor classrooms. In rural areas, encouraging the establishment of a farmers' market, food-buying clubs and healthy corner stores creates healthier options, Dr. Morris said. There has been a decrease in obesity of third grade New Mexico students from 22.6 percent to 19.9 percent between 2010 and 2013. While rates for Hispanic obesity have remained flat, there has been a decrease of nearly seven percent among Native Americans and a five percent decrease among whites, and these disparities are being studied.

Dawn Sanchez, southwest region health promotion manager at the DOH, described the success of Healthy Kids Las Cruces, which has become a model for other communities (see handout). Initially, five community leaders were identified in health care, food delivery, education, community planning and parks and recreation. Outcomes of their meetings included coordinated efforts to establish safe routes to schools, many new miles of bike routes, the publication of trail maps, the establishment of open school yards and the crafting of a joint use agreement for sharing of community athletic facilities. Outcomes to increase healthy eating included fresh fruit and vegetable tastings for more than 12,000 students, implementation of a federal snack program providing fresh fruits and vegetables in 14 elementary schools, school garden programs and multiple community garden partnerships. Setting priorities, goals and objectives through a comprehensive work plan, the coalition plans to expand into Main Street downtown businesses and to enhance community health care through a partnership with the Paso del Norte Health Foundation.

## **Best Practices for Addressing Childhood Obesity**

Carol W. Turner, Ph.D., food and nutrition specialist at the NMSU Cooperative Extension Service, gave committee members a brief history of the unique partnership among federal, state and county governments that was constitutionally mandated in New Mexico in 1915 (see handout). Dr. Turner then described two programs offered by the Cooperative Extension Service that help address childhood obesity in New Mexico.



The first of these is Ideas for Cooking and Nutrition classes that reached nearly 21,000 children in 199 schools in 18 counties during the 2013-14 school year, Dr. Turner said. Initiated in 1970, the classes engage children in trying new foods and in building nutrition and physical activity skills. The second program is Fit Families, which is a seven-week course of hands-on cooking and activities that involve the whole family learning together and adopting a healthier lifestyle. Many families do not know how to cook food that is quick and healthy, Dr. Turner said. The Cooperative Extension Service has nutrition partnerships with Farm to Table, La Semilla and Healthy Kids New Mexico and works with policy changes involving federal rules, state funding, New Mexico schools and municipal efforts to create healthy food zones.

Patricia C. Keane, M.S., is a principal investigator for the Prevention Research Center (PRC) in the School of Medicine at the University of New Mexico (UNM). The PRC's mission is to provide science-based health promotion and disease prevention research (see handout) and, through collaboration, training, dissemination and evaluation activities, to improve health and quality of life for all New Mexicans. Nutrition, physical activity and obesity prevention are major focuses of research for the PRC, Ms. Keane said. In New Mexico, Native Americans (36.3 percent) and Hispanics (30.8 percent) are at increased risk for being overweight and obese compared with non-Hispanic whites (20.8 percent), and this disparity is evident in kindergarten. Prevention strategies focus on improved nutrition and increased physical activity, but changes to policy and environment are important as well. Ms. Keane's presentation included suggested strategies and a listing of multiple resources. She also described the Child Health Initiative for Lifelong Eating and Exercise (CHILE Plus) for preschool-age children and their families and the Supplemental Nutrition Assistance Program Education (SNAP-Ed), which encourages healthy food choices by those receiving SNAP benefits, among other projects. Starting in preschool is so important, Ms. Keane said. It takes time and resources to involve children in the process.

### **La Clinica de Familia (LCDF)**

Suzan Martinez de Gonzales, chief executive officer (CEO) of LCDF, said her clinic is the largest safety net provider in the city of Las Cruces and southern Dona Ana County and is located in a county where 24 percent of the population has lived in poverty for at least three decades (see handout). LCDF has accepted the city's conveyance of the old hospital building for renovation into a teaching community health care center providing medical, dental and behavioral health services. Ms. Martinez de Gonzales said that LCDF is very busy, currently seeing up to 22,000 visits annually with a staff of 317, and there are not enough exam rooms. The new facility will allow the clinic to increase primary care for 13,000 additional clients and will require additional staff of 144. As a teaching center providing integrated community health services, LCDF hopes to alleviate the high cost of emergency room care. As a federally qualified health center, LCDF is asking the LHHS for support in obtaining state funding of \$1.2 million for information technology (IT) needs, Ms. Martinez de Gonzales said, including new cable throughout the renovated building and a new wireless network.

A committee member asked if LCDF had been approached by Burrell College of Osteopathic Medicine. Ms. Martinez de Gonzales replied in the affirmative, but she stated that

plans to become a teaching center were already in place. Several members congratulated LCDF for its many years of nonprofit work in the community. A member asked if LCDF had considered the state's Anti-Donation Clause of the Constitution of New Mexico; better to look into this now instead of being surprised later if there is a problem, the member cautioned. Another member suggested that LCDF might approach the Office of the Governor about having its IT request included in the budget as statewide impact funds.

### **Public Comment**

Erin Marshall, volunteer New Mexico campaign manager for Compassion & Choices, gave an update to the committee on the *Morris* case. The judge ruled that terminally ill, mentally competent residents have a constitutional right to request prescription medication to shorten their suffering. Ms. Marshall provided information (see handout) about this decision and about the attorney general's intent to appeal the ruling. If this decision is affirmed on appeal, aid in dying will be permitted in New Mexico, Ms. Marshall said. Compassion & Choices will wait to see what happens to the appeal and will not be urging any legislation during the upcoming session.

George Brown, a 58-year-old Vietnam veteran, said there has been a breakdown in health care for veterans in the state. Mr. Brown said he spent most of his life as a trucker, but now he is in very poor health, on oxygen full time and living in a trailer on borrowed money. Mr. Brown said he has never asked for help before, but he finally got some medication for anxiety from the Veterans Health Administration after numerous calls. He asserted that veterans are not being very well served in New Mexico. A committee member said Mr. Brown resides in his district, that he has been directed to Centennial Care and that he may qualify for Medicaid.

Ms. Keane, speaking of behalf of herself, noted that this is Hunger Action Month, and she is concerned about food insecurity and challenges with New Mexico's SNAP applications and new work requirements. At a recent public hearing, representatives of the HSD were less than respectful to those who opposed the changes, Ms. Keane said. Health impacts of hunger include infants at greater developmental risk, pregnant women at risk for lower birth weight and higher rates of hospitalization toward the end of the month when benefits run out. Hungry children have higher rates of depression and anxiety and are less able to learn.

A member suggested that a letter be sent from this committee to Secretary Squier asking for an investigation into the behavior of HSD employees at that public hearing. The member said he seeks to get at the heart of the manner in which the HSD is conducting itself. A motion was made, seconded and passed for staff to determine if there is an applicable code of conduct for state employees and to draft a letter to Secretary Squier asking her to investigate the incident.

### **Recess**

The meeting recessed at 5:45 p.m.

## **Thursday, September 11 — Elephant Butte Lake Event Center, Elephant Butte**

### **Welcome and Introductions**

Representative Madalena reconvened the meeting at 9:16 a.m., welcomed legislators and guests and asked staff members to introduce themselves.

### **Sole Community Provider Hospitals Funding**

Jeff Dye, president and CEO of the New Mexico Hospital Association, reminded the committee that there is no longer any such thing as the "sole community provider program". It is now the Safety Net Care Pool (SNCP) program. Mr. Dye's association represents 44 member hospitals, and he said all are dealing with a major transition; health care reform is happening day-in and day-out, and the new world order is less reimbursement and more scrutiny, he said. Hospitals' Medicare/Medicaid cost report, which generally has grown by three to five percent annually, shows a .08 percent increase for 2013, basically flat, which is a sign of expenses being reined in, Mr. Dye said. Hospitals took a reduction in reimbursements four years ago before the Medicaid expansion, and now with less income, they are being forced to reduce or spin off high-cost services such as obstetrics and home care. While the ACA will mean many more patients are insured, it will take time for full coverage, and the need for uncompensated care has not gone away, Mr. Dye asserted. He provided a spreadsheet summary of SNCP payments to hospitals by county (see handout).

Steve Kopelman, executive director of the New Mexico Association of Counties (NMAC), provided a packet of information to members that included the organization's priority resolution regarding Senate Public Affairs Committee Substitute for Senate Bills 268 & 314 and Senate Finance Committee Substitute for Senate Bill 368 (SB 268), passed in the last legislative session as a compromise on the counties' gross receipts tax (GRT) contribution to fund the new SNCP program (see handout). Governor Susana Martinez line-item vetoed the three-year limitation on county funding in SB 268, which Mr. Kopelman stated has left counties with unlimited long-term liability for what is essentially a state program, the priority resolution concludes, and the NMAC resolves to work collaboratively with the Office of the Governor and legislative leadership to help craft solutions. The sole community provider program was voluntary, Mr. Kopelman noted, with counties working directly with their local hospitals, but when the Medicaid waiver was renegotiated by the HSD and the SNCP was created, it was no longer a county program. SB 268 was an emergency measure, he said, and it already has had dire effects on some counties, forcing them to cut almost all of their indigent care programs and lay off many local providers, leaving counties with the unhappy prospect of having to raise taxes. The NMAC handout also includes a detailed description of the impact of SB 268 on San Juan County, where the indigent health care program includes ambulance, substance abuse treatment, home health care and hospice services that are now in the negative by more than \$800,000.

Brent Earnest, deputy secretary, HSD, said the HSD has worked through changes in the Medicaid waiver to establish the new program and there were not a lot of options (see handout). There is always fear of the unknown, he said, and as payments start to flow in from the new

SNCP, there will be a settling with fewer uncompensated claims coming through. Some counties say the new structure is better, Mr. Earnest said, and counties do have other sources of income. San Juan County has a revenue problem, he said, and this needs to be kept in mind during the discussion. Mr. Earnest said there is a \$12 million shortfall in state funding necessary to make the anticipated hospital payments, and while the HSD found a one-year fix for fiscal year 2015, a recurring gap in hospital payments will remain.

Upon questioning, Mr. Earnest and committee members discussed the following topics.

*State's reluctance to use general funds to pay this obligation.* A member said he has read Medicaid regulations and the ACA, and nowhere in these documents are counties mentioned. The member asserted that a new tax burden has been shifted by this administration from the state to the counties. Mr. Earnest disagreed, pointing out that Medicaid regulations do talk about participation from local entities; it is not uncommon in other states for local entities to put up matches. Counties have contributed \$56 million to Medicaid in the past, and this program asks them to contribute only half that amount, Mr. Earnest said. Mr. Kopelman countered that this assertion is deceiving, since hospitals contributed much of the previous match. Before, the payment was voluntary; now, the obligation to put money up is mandatory. There is a recurring shortfall of approximately \$12 million, Mr. Earnest said, and it is the governor's position that additional funding has to come from local governments.

*Continuing discussions toward solutions.* Mr. Earnest said he is willing to continue working with counties. A committee member expressed disappointment that meetings stalled; the bill that was passed was a stop-gap measure, with the understanding that discussions would continue over the interim. Mr. Kopelman noted that the NMAC has set up policy committees, but counties have different needs and are not unified. Jails are costing counties \$230 million, he pointed out, and those expenses have become a huge drain on budgets. The counties were not at the table when the new Medicaid waiver was being worked out, Mr. Kopelman noted. The bill that was passed by the legislature required that the HSD make a good-faith effort to fill the gap, and he is disappointed that the HSD has not asked for an increase in its budget. Another member urged Mr. Earnest and Mr. Kopelman to establish a timetable to resume discussions and to report back to this committee.

Mr. Kopelman was asked by a committee member why the NMAC did not sue the state following the governor's veto of the sunset provision in SB 268. NMAC members wanted to see if a voluntary resolution could be found, Mr. Kopelman explained. The state has the plan it likes, the member insisted — no sweat off its back — and counties can raise taxes or cut services.

*Counties that cannot meet payments.* Members asked for clarification about Mr. Earnest's statement that San Juan County had remitted zero dollars for its GRT increment under the new SNCP. Lisa Gomez, San Juan County indigent program administrator, explained that under the previous sole community provider program, the county had met all of its payments. Now, without any hospital participation with the county, it is impossible to meet the new one-sixteenth GRT

obligation; the county is short \$800,000. The board of county commissioners already has reduced payments to indigent programs and providers by 50 percent, she said, and it changed requirements to reduce the numbers of those eligible for services. Over the past five years, San Juan County has cut its budget by \$51 million, reduced its work force by eight percent and now is considering tax increases, Ms. Gomez said. Nearly one-third of New Mexico counties are in a similar position.

### **Public Comment**

Rebecca Dow, founder and director of AppleTree Educational Center, thanked committee members for bringing FOCUS and the need for a preschool cost study to the table for discussion, and she told them that advocates from the New Mexico Child Care and Education Association will be coming to them for legislation during the upcoming session.

Wendy Evanston, nurse, developmental therapist and advocate, thanked committee members for continuing to support home visiting. The Little Things Matter Program has been a blessing to the community since funding was cut for maternal child care. The program coming through the CYFD raises red flags for people who might need these services, she said, so more marketing is needed to increase awareness. Millions of dollars are being spent on prisons, and this is preventable, she said. Community programs like this help to rebuild the family support that used to be there.

Jenny Sheppard, a health educator, also voiced support for Little Things Matter as an important service that helps families bridge the gaps. In rural areas, people have to travel many miles for health services, Ms. Sheppard said, and more community health workers are needed to provide local community health care. She has had to change jobs many times, as her position gets eliminated when grant funding runs out, and she is asking for sustained funding for community health workers.

Jamie Michael, who works in the Dona Ana County Health and Human Services Department, said she wants to reinforce previous comments about decreasing county revenue and increasing expenses. Her county serves 47 of the state's 50 colonias, and there are undocumented lawful persons who are not covered by Medicaid but still need services and substance abuse treatment, as well as persons who make a little too much income to qualify for Medicaid but still cannot afford health insurance.

Mary Lamb, indigent claims specialist for Lea County, said undocumented persons do need care, and nearly 60 percent of their claims are for undocumented persons. Ms. Lamb would like to know from Mr. Earnest what the consequences are for counties that do not pay their GRT contribution or pass an ordinance to redirect these funds as set forth in SB 268.

Scott Annala, indigent health care administrator for Lincoln County and chair of the NMAC Healthcare Policy Committee, said nearly half of New Mexico counties are in a similar negative position as San Juan County, and they will be forced to raise taxes.

Jason Espinoza said that the SNCP, if not properly funded, is a looming economic crisis. Many hospitals will close, with employee layoffs from high-paying jobs. Communication between the counties and the state must remain open, he said, adding that everyone owns this problem, and everyone needs to work together toward solutions.

### **Proposed Rule Changes to SNAP Work Requirements**

Mr. Earnest provided a presentation on SNAP requirements that the state will begin implementing in phases, by county, starting on November 1, 2014. New federal work requirements were signed into law by President Bill Clinton in 1996, but a temporary waiver was implemented in 2009 with the American Recovery and Reinvestment Act (see handout). New Mexico's reinstatement of requirements will include additional assistance for individuals to help them build skills and find work, Mr. Earnest said.

There are currently 454,997 individuals on SNAP in New Mexico, and of these, 60,430 are adults with children over the age of six and 26,969 are adult recipients without children, Mr. Earnest said. In October 2013, New Mexico reimplemented mandatory education and training requirements for childless adults, and beginning in October 2014, it will also start to reimplement employment and training requirements for adults with children over the age of six, thus removing the state's 2009 waiver. Allowable work activities for childless adults include community service, job training and work of 20 hours a week or more. For adults with school-age children, allowable activities include individual or group job search/employer contact, community service and job training. There are numerous exemptions from the work requirements, Mr. Earnest said, providing a list of these for both groups of individuals. He also provided a list of counties and Indian tribes, pueblos and nations that are exempt because of high unemployment rates. Some reimbursement is available for dependent care and transportation.

Ed Bolen, J.D., is a senior policy analyst at the Center on Budget and Policy Priorities, an independent, nonpartisan, nonprofit institute located in Washington, D.C. The center conducts research and analysis on a range of federal and state policy issues affecting low- and moderate-income families. Mr. Bolen described the potential impact of the state's proposed changes to SNAP (see handout), and he urged a more measured approach so that work and job training programs do not increase food insecurity by assigning individuals to activities they are not able to complete. Mr. Bolen urged the HSD to request a temporary 12-month waiver for the entire state for 2015 to prevent an increase in hardship on vulnerable New Mexicans. Under federal law, SNAP imposes a very harsh time limit on unemployed childless adults: these individuals can only receive SNAP benefits for three months out of every three years unless they are working or participating in job training. New Mexico lags behind most of the U.S. in creating jobs lost during the recession, which is more evidence for supporting a request for a temporary waiver, Mr. Bolen asserted. The waivers were designed by Congress to provide a safety valve in states with high unemployment, he said, adding that he is deeply concerned that unemployed poor individuals who are willing to work but unable to find a job will lose their SNAP benefits under this rule. Mr. Bolen urged the legislature to closely monitor outcomes of the SNAP employment and training program.

Kathy Komoll, director of the New Mexico Association of Food Banks, told committee members that the food bank industry is one of the most collaborative and adaptive to challenges, with rural outreach, mobile pantries, food rescue and on-the-job training. Every week, more than 40,000 New Mexicans seek food assistance (see handouts), she said, and over 40 percent of people served by New Mexico food banks are children under the age of 18, while 21 percent are seniors and 16 percent are grandparents raising grandchildren. Overall, 89 percent of households seeking food assistance report an annual income of less than \$20,000 per year (\$386 per week), she said. New Mexico is ranked number one in childhood hunger. Food banks are already operating at capacity and are having to turn people away. The system cannot serve every person who drops out of SNAP, Ms. Komoll said; food banks simply cannot fill that gap.

Ruth Hoffman, director, Lutheran Advocacy Ministry, reminded members that the U.S. Department of Agriculture directs SNAP and asked what problem is being solved by changes to the state program. The question being asked should be, how do we address hunger in New Mexico?, Ms. Hoffman said. The HSD has had a backlog of applications, has experienced difficulty with its IT system and now is adding complex reporting requirements with no case management to evaluate the work program. Where are the jobs?, she asked. Where is the job training? Where is the affordable child care? What is community service and how will it be administered? Ms. Hoffman said her organization has advocated for people living in poverty for over 30 years, and she also is speaking on behalf of the New Mexico Conference of Churches. She expressed doubt that the HSD or its contractor, SL Start, has the capacity to manage the thousands of participants who must now be added to the work program caseload, and she fears that participants will simply be pushed off SNAP when they are unable to comply with a poorly planned and administered program.

Sovereign Hager, staff attorney with the New Mexico Center on Law and Poverty, expressed frustration that it has been very difficult to get information about changes to SNAP that were announced in August but were not made publicly available. The HSD has experienced serious difficulty with its IT program and the influx of new Medicaid consumers, Ms. Hager said, and already had demonstrated problems with inadequate performance data reporting and a high rate of improper denials and terminations in SNAP. The new state requirements are not mandated by federal law, she asserted, and will require monthly tracking of tens of thousands of New Mexicans. There is no description of community service in the state's regulations, and the cost of dependent care can only be reimbursed; it is not paid up front. When people lose benefits, the state loses money as well, with an estimated \$15 million less that will be coming into New Mexico's economy. There has been a 24 percent decline in SNAP participation as a result of job requirements for childless adults, Ms. Hager said, and no evidence that more are working, just that they lost their benefits. She urged committee members to require the governor to report on results from the job search requirement that has been in place for the last year.

Upon questioning, panel participants and committee members discussed the following topics.

*Why a rush for New Mexico to do this now?* Mr. Earnest said that a year from now, New Mexico will be facing the same issues. By starting now, new requirements can be phased in by county, and there is an opportunity to engage people, he said. A member countered that doing this early may allow for administrative phase-in, but there is no phase-in of jobs. Ms. Hager reported that more than 20,000 individuals have been referred to lose benefits, but there are no follow-up data from the HSD as to how many actually lost benefits and why. There has been a big drop in SNAP enrollment during this period, she noted. Ms. Hoffman expressed doubt that the HSD has the capacity to engage SNAP participants. Last year, the state did engage single childless adults, and it referred 20,000 of them, she said.

*Measures of engagement.* A committee member asked for metrics on the HSD goal of engagement. In his presentation, Mr. Earnest used data from the U.S. Bureau of Labor Statistics, the member noted, and those numbers do not work for rural New Mexico. If Mr. Earnest can pick his own numbers, they are impossible to compare, and since no one understands it, no one can question it. Another member asked Mr. Bolen if there have been any studies about the efficacy of this type of engagement. There has not been a comprehensive one, Mr. Bolen said, but research has indicated that it has very little impact, and studies have shown that community service rarely leads to a job. There might be value to someone being busy, he agreed, but this should not be confused with obtaining skills to get a job. Subsidized jobs lead to long-term wage gain, Mr. Bolen concluded. The member continued to press Mr. Earnest for specific details about the department's engagement plans. Mr. Earnest said plans for engagement are not new; the HSD has done them in the past. Putting a lot of people into subsidized jobs has worked for several thousand individuals, Mr. Earnest said, but to do this, the HSD would have to talk about the resources that would be needed. Precisely his point, the member said: the HSD does not know what resources are needed to implement its engagement program, and the member wants to see a presentation on this at the next meeting of the LHHS.

*Concerns about the HSD contractor, SL Start.* A member asked Mr. Earnest if the Legislative Finance Committee (LFC) has done an evaluation of SL Start recently. It has not, Mr. Earnest said, but the HSD has conducted regular reviews of its work on the New Mexico Works Program (Temporary Assistance for Needy Families). The member noted that SL Start's contract was renewed six months ago for \$10.1 million and asked if the HSD reviews of the Washington State-based contractor are posted on the sunshine portal. They are not, Mr. Earnest said, but the contract is. Mr. Earnest promised committee members that he would get back to them with more information about SL Start's performance and its expanded role in the SNAP work program.

*Lack of tribal consultation.* A committee member noted that there has not been consultation with the tribes regarding SNAP benefits for members who are off-reservation or consultation about who is going to be exempt. Ms. Hager said there was a resolution from tribal governments requesting tribal consultation, and a letter was sent to the U.S. Department of Agriculture objecting to the state's SNAP plans moving forward without tribal consultation.



*SNAP definition of "disability".* A member asked Mr. Earnest how disability is determined by the department and was told that it is done by looking at obvious signs like disability payments and by proof from medical records. Ms. Hager stated that what is not obvious in the regulations is that there may be barriers that may fall under the federal Americans with Disabilities Act (ADA). An ADA compliance plan would be good, she continued, but the HSD does not have one. A complaint has been filed against the HSD and the SL Start contract regarding ADA compliance and the lack of provisions to accommodate persons with disabilities, Ms. Hager reported.

### **New Mexico Health Insurance Marketplace Status Update**

John Franchini, superintendent of insurance, Office of Superintendent of Insurance (OSI), reported that the New Mexico health insurance market appears to be stabilizing, and rates are even more competitive than anticipated. There are 33,740 individuals in the exchange as of August 31, 2014, and another 30,000 to 40,000 will be coming into the exchange with ACA-noncompliant plans. These plans will be grandfathered in and can be enhanced on the exchange, he said. The ombudsman program, funded by a grant, has had more than 1,100 contacts. Also through a grant, an outreach director and two assistants have been added to staff. The OSI is working on a global positioning system (GPS) tool that will allow an instant view of insurers' provider networks; this will be posted on the OSI web site soon.

Superintendent Franchini discussed at length the New Mexico Medical Insurance Pool, which insures the sickest of the sick, and previously was the only avenue for these individuals to be insured. Since implementation of the ACA, the pool of 8,450 has dropped to 5,200 at the end of June, with many individuals qualifying for Medicaid and others now being covered under a spouse's policy. The pool is very expensive for the state and needs to be further depopulated, Superintendent Franchini said. An actuarial study is under way to explore raising the rates. Nonetheless, the pool should not be eliminated, he said; it could become a temporary place for people to have coverage between enrollments. New Mexico is now fifth highest in the rate of uninsured, Superintendent Franchini said. The state's 2014 return on investment for health care puts it more near the middle, at thirty-second. There have been \$4 billion worth of health insurance premiums written in the state, he said, and while this amount is small compared to other states, New Mexico's system needs to be nurtured to make it better.

### **Aging in Sierra County**

Majorie "Majie" Powey, M.S., R.N., Sierra Joint Office on Aging, provided members with Sierra County statistics: a population estimate in 2013 of 11,572, with 39 percent who are 60 years and older and eligible for services under the federal Older Americans Act. Sierra County has increasing numbers of seniors who have low incomes and need services (see handout). Ms. Powey described a series of programs funded by federal, state and/or local contributions that provide meals, transportation and homemaker services for seniors in what is a very rural county. In recent years, funding has been reduced for most of these critical programs at the same time demand has increased, Ms. Powey said, and it is her understanding that senior programs are once again on the chopping block. She is appearing before the committee today to ask for help. A member made a motion, seconded and approved, that the committee send a letter to the LFC asking for

supplemental state funding to the Older Americans Act for meals. Another member also wants the letter to inquire about the possibility for seniors to purchase food stamps.

### **Recess**

The meeting recessed at 5:13 p.m.

### **Friday, September 12 — Elephant Butte Lake Event Center, Elephant Butte**

Representative Madalena reconvened the meeting at 9:13 a.m., welcomed legislators and guests and asked staff members to introduce themselves.

### **New Mexico Health Insurance Exchange (NMHIX) Update**

Jason Sandel, vice chair of the board of directors, NMHIX, introduced Amy Dowd, the new CEO hired by the board at the end of August. Ms. Dowd, formerly director of Idaho's insurance exchange, said she feels the future of the NMHIX is bright. Her immediate focus will be working with the board for success of the open enrollment period starting November 15. Idaho is different than New Mexico in that there was no expansion of Medicaid, Ms. Dowd said, but similar in that it also is a very rural state and has a half-dozen federally recognized tribes that contract with the exchange. The Idaho exchange had to be creative and work very hard to reach rural populations, she said; its initial enrollment was 78,000.

Mr. Sandel's presentation (see handout) included a chart of the uninsured rates for New Mexico: 21.6 percent just prior to the ACA, 14.5 percent currently and 9.6 percent projected for the spring of 2015. The outreach campaign for the NMHIX definitely "missed the mark", Mr. Sandel admitted, referring to disappointingly low numbers of businesses and individuals who signed up last year. A mass media approach was chosen instead of person-to-person contact, but now a new request for proposals has gone out for additional outreach contractors and is due on September 20. Mr. Sandel was pleased to announce that Native American outreach has expanded to the Navajo Nation, a long-sought goal, and an additional 85,000 Medicaid enrollees are expected by the year's end. The board voted to stay with the federal platform through the next enrollment period to allow thorough testing of the state's IT system interfaces. The board now is focused on determining strategies for sustainability once grant funding runs out.

Upon questioning, Mr. Sandel, Ms. Dowd and committee members discussed the following topics.

*Marketing strategies.* A member suggested small contracts with state universities to do field research on how to achieve the best outreach. Another member suggested utilizing schools, which are often the center of any community. As a point of clarification, a member asked if there is a difference between an enrollment partner and an outreach contractor. In New Mexico, outreach contractors have not been involved in enrollment; this was directed by the interim CEO of the NMHIX, but it may be changing, Mr. Sandel said. In Idaho, there was no separation between outreach and enrollment, Ms. Dowd said. The original NMHIX marketing vendor was based in

Wisconsin, and, upon questioning, Ms. Dowd said she felt certain that there are companies in New Mexico that could have provided this service. A committee member said he voted against legislation creating the NMHIX because he objected to its exemption from the Procurement Code. The member asked why a Wisconsin company would have more expertise than a New Mexico company and urged the NMHIX to hire talented local companies.

*High cost of doing business.* A member noted that more than \$42 million had been spent to sign up 34,000 enrollees, and the cost per individual seemed extremely high. Ms. Dowd agreed, and she said her focus will be on using money wisely to get more enrollees. In earlier discussions with the NMHIX, it was suggested that a \$20 million annual operating budget was needed to sustain it. Asked about the budget in Idaho, Ms. Dowd said it was about half that figure. The current financial report presented by Mr. Sandel shows nearly \$40 million of the \$42.4 million in total NMHIX expenditures in a "contractors" category, and a member asked for a breakout of that category, as this would be very helpful to the committee. Many decisions about the direction of the NMHIX had already been made by the time the board was constituted, Mr. Sandel explained, and now different decisions have been made for new directions; Ms. Dowd is the face of that change.

### **Health Coverage Provider Network Adequacy**

Claire McAndrew is private insurance program director of Families USA, a national nonprofit, nonpartisan organization focused on achieving high-quality and affordable health care for all. Ms. McAndrew said she has spent much of the past year researching issues of access to providers once a consumer has enrolled in coverage, and she has found that an insurance card does not guarantee access to care. Advocates and consumers have been raising concerns about provider network adequacy for decades, Ms. McAndrew said, as they find directories out of date as providers have moved away or their phones have been disconnected or they are not taking new patients (see handouts). In-network specialists may be even harder to find, she said. Marketplace competition has brought insurance prices down, and the ACA forbids discrimination for preexisting conditions, so network design has become an important tool for insurers to control costs. This can be good if the network is carefully shaped, but adequacy is not always the result. New Mexico does have protections in statute, but it has issues with monitoring and enforcement, Ms. McAndrew said. Look to agency capacity to make certain a comprehensive investigation can be mounted, she advised, and monitoring compliance is the only way to know. The legislature could require or recommend satisfaction or secret shopper surveys. If a plan provider has been notified and does not correct deficiencies, more actions and penalties can be pursued and service areas can be restricted until problems are worked out.

Paige Duhamel, a staff attorney at the Southwest Women's Law Center, told committee members that access to health care is key to her nonprofit center's mission. Ms. Duhamel said her organization has been hearing about a lot of issues with adequacy for maternity and breast and cervical cancer care, as well as a lack of access to specialty care (see handout), and she agreed with Ms. McAndrew that New Mexico needs better monitoring of provider networks. There are problems with continuity of care when providers at federally qualified health centers, the Indian Health Service and Tribal 638 programs are not part of the network. There is little transparency of

MCO provider network oversight, Ms. Duhamel added. Other issues include consumer confusion about different provider networks for different plans from the same insurance carrier and increasing requirements for prior authorizations before care is delivered. Ms. Duhamel provided a list of potential updates to New Mexico's network regulations and described ongoing meetings with the Stakeholders Advisory Group and the OSI, which has been working with UNM to map provider networks. In addition, advocates have requested that Julie Weinberg, director of the Medical Assistance Division, HSD, present on MCO network adequacy regulation at the next Medicaid Advisory Council meeting. Ms. Duhamel was pleased to report that the OSI has been receptive to hearing more about putting additional regulations into place, and she is very excited about new OSI staff on board.

During questioning by committee members, Sharon Huerta, Centennial Care CEO at BlueCross BlueShield of New Mexico (BCBSNM), spoke from the audience to defend access and availability of her organization's provider networks. Ms. Huerta, invited by the chair to join presenters at the table, said she welcomes the opportunity to meet with advocacy groups. With regard to behavioral health, Ms. Huerta said she personally has been visiting with new providers. Oversight of her organization is tremendous, Ms. Huerta said, with hundreds of reports required on quality improvement, consumer satisfaction, finances and anti-fraud efforts, in addition to state reporting required in its contract. All claims from Native American 638 programs are honored, Ms. Huerta said, and those claims are paid while staff is still working through care coordination. The organization's four tribal liaisons have reported that Native Americans are pleased with care coordination, and, hopefully, BCBSNM can continue to have a positive impact on the Native American community.

A member speculated that if the state moves to better standards, perhaps the OSI ombudsman could monitor this. Ellen Pinnes, a lawyer and health policy consultant, spoke from the audience to clarify that the OSI ombudsman's role is to provide individual case resolution. The state is short on standards for specialty care, Ms. Pinnes said, and this a big area of concern for many people. The member, questioning whether there is a need for legislative action, made a motion for the committee to send a letter to the OSI inquiring as to what extent additional legislation is needed in regard to the issues discussed. The motion was seconded and passed unanimously.

### **Adjournment**

There being no more business before the committee, the fourth meeting of the LHHS for the 2014 interim adjourned at 12:25 p.m.